

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

THEODORE GLADYSZ,

Plaintiff,

v.

**CIVIL ACTION NO. 3:08-CV-64
(BAILEY)**

**GEORGE TRENT, C.O. JACOBY,
C.O. MCCLAIN, C.O. GASKINS,
and C.O. MCCRAY,**

Defendants.

ORDER ADOPTING OPINION/REPORT AND RECOMMENDATION

I. Introduction

On this day, the above-styled matter came before the Court for consideration of the Opinion/Report and Recommendation of United States Magistrate Judge John S. Kaull. By Standing Order entered on March 24, 2000, and now incorporated into this Court's Local Rules, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on August 24, 2009 [Doc. 58]. In that filing, the magistrate judge recommended that this Court deny the defendants' Motion for Summary Judgment and set this matter for trial.

II. Procedural History

The magistrate judge had previously filed an R & R on April 29, 2008 [Doc. 12]. Upon careful review of the R & R, this Court adopted the same [See Doc. 15] for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court dismissed with prejudice the plaintiff's claims against defendant Elders and ordered that

Elders be dismissed as a defendant in this action. Additionally, this Court dismissed plaintiff's claims of verbal threats and harassment against Defendants Trent and McCray, or any other person. Lastly, the plaintiff's Eighth Amendment claims against Defendants Trent, Jacoby, McClain, Gaskins, and McCray, were allowed to proceed, and those defendants were ordered to be served summonses and a copy of the Complaint [Doc. 1] through the United States Marshal Service. The summonses were returned executed, and these defendants filed a Motion for Summary Judgment [Doc. 55].

III. Applicable Law

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984).

IV. Discussion

Here, objections to Magistrate Judge Kaull's R & R were due within ten (10) days of service of a copy of the R & R, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The Court notes that all parties in this matter are represented by counsel. Accordingly, service of the R & R was accepted via electronic filing on the date of filing, which was August 24, 2009. See Doc. 58. To date, neither party has filed objections to

the R & R. Accordingly, this Court will review the report and recommendation for clear error.

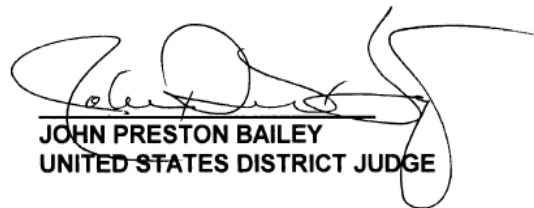
V. Conclusion

Upon careful consideration, and for the reasons more fully contained in the magistrate judge's report, it is the opinion of this Court that the Magistrate Judge's Opinion/Report and Recommendation [**Doc. 58**] should be, and is, **ORDERED ADOPTED**. As such, the defendants' Motion for Summary Judgment [**Doc. 55**] is hereby **DENIED**, and this case shall be set for trial at a date to be determined at the **Telephonic Scheduling Conference**, which is hereby set for **October 2, 2009, at 2:00 p.m.** The Court will initiate the conference call utilizing the phone numbers reflected on the CM/ECF docket.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein.

DATED: September 17, 2009.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE